THE HON'BLE SMT JUSTICE T.MEENA KUMARI

&

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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WRIT PETITION NO.12177 OF 2007

Dated: 14.06.2007

Between:

Ch. Gandhi

..Petitioner

And

1. The Government of Andhra Pradesh,
   Rep., by its Secretary to Government,
   Finance & Planning Department,
   Secretariat Buildings, Hyderabad and others.
   .. Respondents.

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THE HON'BLE SMT. JUSTICE T.MEENA KUMARI
&
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO.12177 OF 2007

ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

This is a writ petition filed by the petitioner challenging the order of the tribunal, dated 16.05.2007 in O.A.No.923 of 2006.

The petitioner herein is the applicant before the Tribunal. He filed the above O.A., challenging the proceedings No.K-II(7)8462/2003-2, dated 1.12.2005 issued by the 2nd respondent and seeking to set aside the penalty of reversion of the petitioner to the post of Junior Accountant for two years and also postponing future increments on restoration to the higher category.

The tribunal having observed that the applicant being in charge of the post of Sub-Treasury Officer of non-banking treasury, failed to discharge his functions, which leads and encourages financial irregularities and therefore, it cannot be said that the punishment imposed is disproportionate to the misconduct proved, dismissed the above O.A. Having aggrieved by the same, the present writ petition is filed by the petitioner.

Heard the learned Counsel for the petitioner and the learned Government Pleader for Services-I.

The learned Counsel for the petitioner contended that he was on leave on 15.4.2003 and therefore, he did not attend duties on that day and he attended to duties on 16.4.2003, but he left the office at about 4.00 p.m., due to some health problem, during which, the Deputy Director visited the office and noticed certain lapses in the functioning of the office. It is further contended that there was no need or necessity

for him to undertake any corrections in the record as alleged in the charge memo, as he did not take charge on 15.4.2003 because of his leave on that day and therefore, he cannot be made liable for tampering of records and that he was made responsible without any material on record and that the charges leveled against him and the findings are bad under law and he never committed any misconduct and that the punishment is disproportionate to the misconduct. Apart from that, the learned Counsel pointed out the competency of the Regional Joint Director of treasuries and accounts in issuing fresh charge memo by cancelling the earlier charge memo issued by the Deputy Director. It is further contended that the tribunal failed to appreciate all these aspects in a proper perspective and therefore, the order of the tribunal is liable to be set aside.

On the other hand, the learned Government Pleader contended that the Regional Joint Director of Treasuries being the appointing authority is competent to withdraw the earlier charge memo and basing on the material, the enquiry officer found the applicant on duty on 15.4.2003 and also found grave misconduct and therefore, the punishment imposed is proportionate and that the tribunal appreciated all these facts in a proper perspective and therefore, the order of the tribunal needs no interference.

Before going to decide the issue involved in this writ petition, it is relevant to note the facts of the case in brief:

On 16.4.2003, the 3rd respondent-Deputy Director of District Treasury made a surprise visit to the Sub-Treasury Office, Nakirekal at about 4 p.m., and noticed certain irregularities. At that time, the applicant, who was working as Senior Accountant was absent. On that, the 3rd respondent-Deputy Director issued a memo to the applicant calling for his explanation. Having not satisfied with the

explanation submitted by the applicant, the 3rd respondent initiated disciplinary proceedings and called for his explanation. While so, the Regional Joint Director of Treasuries & Accounts issued a fresh charge memo superseding the earlier charge memo issued by the 3rd respondent. Subsequently, the Regional Joint Directors of Treasuries & Accounts Department were abolished and consequently, the Deputy Director of District Treasury is nominated as appointing authority and also disciplinary authority up to the category of Senior Accountant within the District including pending cases. The Disciplinary authority having observed that the charges framed against him were proved, imposed a punishment of reversion to the lower post of junior accountant for two years with effect on postponing future increments on restoration to the higher category, against the petitioner.

A perusal of the material available on record goes to show that the petitioner is challenging the competency of the Regional Joint Director in issuing the charge memo for major penalty and also imposition of double punishment against him.

Insofar as the competency of the Regional Joint Director in issuing the charge memo for major penalty is concerned, the tribunal has gone through the provisions of APCS (CC & A) Rules, 1991 (hereinafter referred to as 'the Rules') and rightly held that at the time of issuance of charge memo to the applicant, the Regional Joint Director, who was subsequently abolished, is the appointing authority and he is competent to issue disciplinary proceedings and there is no impediment for him to alter or frame fresh charges and therefore, the findings of the tribunal in this regard, needs no interference.

Insofar as the irregularities or misconduct of the applicant is concerned, it is the case of the applicant that he was not present on 15.4.2003 and therefore, he did not take charge of the Sub-Treasury

Officer and as such, he cannot be made liable for the lapses on the part of the Sub-Treasury Officer, who was alleged to be on leave without any prior permission. Since the circumstances involved in the instant case amount to question of fact, the same cannot be dealt with, in the proceedings of this nature, before this Court and therefore, the finding of the tribunal, in this regard, needs no interference.

Insofar as the imposition of punishment, it is the contention of the learned Counsel for the petitioner that the petitioner was not only imposed reversion but also imposed stoppage of two increments on restoration of higher category and it amounts to impose two major punishments, which are in contravention of the provision of APCS (CC&A) Rules.

At this juncture, it is not out of place to mention the punishment imposed against the applicant by the Disciplinary authority and it reads as hereunder:

> *"Punishment of reversion to the lower post of junior accountant for two years with effect on postponing future increments on restoration to the higher category."*

At this stage, it is relevant to note the provisions of the APCS (CC&A) Rules.

Rule 9: Major Penalties:

(vi) withholding of increments of pay with cumulative effect.

(vii) reduction to a lower rank in the seniority list or to a lower stage in the time scale of pay or to a lower time scale of pay not being lower than that to which he was directly recruited or to lower grade or post not being lower than that to which he was directly recruited, whether in the same service or in another Service, State or Subordinate;

(viii) compulsory retirement;

(ix) removal from service which shall not be a disqualification for

future employment under the Government;

(x) dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

Rule 11 Sub-Rule 27:

(i) every Head of Department may impose on a member of the State Services under his control, the penalty specified in clause (iii) of Rule 9, except in the case of such member holding a post immediately below his rank; and

(ii) every Head of Department declared to be the appointing authority may impose on a member of the State service holding a post at first level or at second level under his control, any of the penalties specified in clauses (i) to (viii) of Rule 9.

Now, coming to the facts of the case on hand coupled with the provisions of Rule 9 of the Rules, it can easily be inferred that the punishments imposed against the applicant i.e., reversion to the lower rank and at the same time, stoppage of two increments come under the purview of two major punishments as contemplated under Rule 9 of the Rules.

At this juncture, it is desirable to draw the mode of imposing punishment from Rule 11 sub rule 27 of the Rules which mandates imposition of any of the penalties specified in clauses (i) to (viii) of Rule 9 of the Rules.

As already stated, the applicant was imposed two major penalties as envisaged at clause (vi) and (vii) of Rule 9 of the Rules. Therefore, it amounts to contravention of Rule 11 of the Rules.

Irrespective of the fact as to whether the applicant has committed the irregularities as pointed out by the Disciplinary Authorities, in the facts and circumstances of the case and in the light of the provisions of Rules 9 and 11 read with sub rule 27 of the Rules, We have no hesitation to hold that the penalties imposed by the

Disciplinary authorities, amount to imposition of two major penalties and thereby, it amounts to contravention of the provisions of Rule 11 sub rule 27 of the Rules. But, the tribunal has failed to consider this aspect in the light of the provisions of the Rules. Therefore, the order impugned herein is liable to be set aside.

Accordingly, this writ petition is allowed setting aside the order impugned herein as well as the order impugned before the Tribunal.

However, it is made clear that this order will not preclude the authorities to pass appropriate orders keeping in view the provisions of the Rules as to referred to above.

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Justice T. Meena Kumari

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Justice G.Chandraiah

Date: 14.06.2007
Nn/gurc

THE HON'BLE SMT. JUSTICE T.MEENA KUMARI
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WRIT PETITION NO.12177 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

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Dated: 14.06.2007